

## **806 KAR 49:040. Captive insurer parents and affiliates.**

RELATES TO: KRS 304.49

STATUTORY AUTHORITY: KRS 304.2-110, 304.49-140, 304.49-170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.49-140 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. KRS 304.49-170 requires the Commissioner of Insurance to promulgate administrative regulations concerning the control of risk management functions of a parent or affiliated company by a pure captive insurer. This administrative regulation establishes the requirements regarding captive insurer parents and affiliates.

Section 1. Definition. "Company" means captive insurer.

Section 2. A pure captive insurer shall participate in the risk management function of any controlled unaffiliated business to be insured by the company and shall establish procedures for effective control of risk management activities regarding the controlled unaffiliated business. The commissioner or his designee may request evidence of a pure captive insurer's participation in the risk management functions of controlled unaffiliated business as a portion of a market conduct or financial examination authorized under KRS 304.2 or at any other time the commissioner deems necessary.

Section 3. Each company shall report to the executive director within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new commissioner or director. A director, officer, or employee of a company shall not, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. That person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

Section 4. In addition to the investment of funds in Section 3 of this administrative regulation, each company chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents. This shall not preclude that person from being a director or officer in more than one (1) insurance company. Each officer, director, and key employee shall file a disclosure with the insurer's board of directors yearly.

Section 5. (1) A person, other than the issuer, shall not acquire or attempt to acquire any voting security of a domestic captive insurer without the prior written approval of the commissioner, if, after the consummation thereof, that person would directly or indirectly be in control or have exercisable control of that company. For purposes of this administrative regulation, "acquire or attempt to acquire" includes making a tender offer or other request for voting securities, making any invitation for tenders of voting securities, entering into any agreement to ex-

change securities for voting securities, or otherwise seeking to acquire or acquiring voting securities in the open public market or private market.

(2) A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner.

(3) In considering any application for acquisition of control or merger with a domestic company, the executive director shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company pursuant to KRS 304.49.

Section 6. Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. Any change in any other information filed with the application shall be filed with the commissioner but does not require prior approval. (27 Ky.R. 2012; Am. 3253; eff. 6-8-2001; TAm eff. 8-9-2007; Crt eff. 2-26-2020; TAm eff. 3-10-2020.)